IN THE HIGH COURT OF JUDICATURE OF

ANDHRA PRADESH

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P. No. 20668 OF 1999

March, 2, 2006

Between

Mohd. Ghouse Moinuddin.

Petitioner

AND

The Regional Manager,

A.P.S.R.T.C.,

Nizamabad and another.

Respondents

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P. No. 20668 OF 1999

ORAL ORDER:

Seeking a writ of mandamus declaring the action of the respondents in not reinstating the petitioner as Driver in pursuance of the Settlement dated 25.5.1995 and Circular dated 21.7.1995, as illegal and arbitrary, and consequently to direct the respondents to reinstate the petitioner as Driver in pursuance of the Circular dated 21.7.1995 treating the period from the date of his termination to the date of his actual reinstatement as leave, the petitioner filed this writ petition.

The petitioner was appointed as Driver in the respondents – Corporation in December, 1993 and his services were regularized with effect from 1.7.1986. While working at Bodhan Depot, he caused an accident on 9.7.1989, and both criminal prosecution and departmental proceedings were initiated. The departmental proceedings culminated in his removal from service and the criminal proceedings ended in his conviction, by the III Metropolitan Magistrate, Vijayawada, but in appeal, the learned appellate Judge – Metropolitan Sessions Judge, Vijayawada, found the petitioner not guilty and acquitted him of the offence. Aggrieved by the order of removal, the petitioner preferred an appeal to the appellate authority on 9.4.1990, who rejected the same confirming the order passed by the disciplinary authority. After his acquittal in criminal appeal by the appellate Court, the petitioner on 21.06.1996 preferred review to the reviewing authority, namely respondent No.1, who by the order dated 23.3.1997, reinstated him into service as Driver afresh and posted him at Bheemgal Depot subject to the conditions that before taking him on duty, he has to be sent to ZSTC, Warangal, for one month and he has to be taken on duty only after completion of one month training and after testing and clearance from Dy. Chief Mechanical Engineer, Nizamabad, and the petitioner after complying with the conditions, was given order of appointment as Driver afresh on 20.05.1997.

Aggrieved by the same, the petitioner preferred this writ petition *inter alia* contending that he is entitled to reinstatement with continuity of service, in view of clause L of Circular No. 43/95-OPD-T dated

21.7.1995, which reads thus:

> *"…If a driver is removed based on the findings of the departmental enquiry and also convicted in the First Court and in the event of his acquittal in the appellate court, he will have a right of appeal on the removal. The appeal should be submitted within one month from the date of the judgment to the authority by which has disposed of the previous appeal of the employee. His appeal should be accompanied by a certified copy of the judgment of the court. The appropriate authority will review the appeal in the light of the judgment and as per the guidelines indicated in pre-paras. In case of reinstatement, in these cases, when acquittal is by Appellate Court, no back wages shall be paid. The period of absence shall however be treated as leave due…'*

In view of the above, the learned counsel for the petitioner contends that since the petitioner in criminal appeal was acquitted by the appellate court, he is entitled to be reinstated, however, without back wages, and this aspect was not adverted to by the reviewing authority.

The respondents, though filed a detailed counter, unfortunately did not advert to Clause L of the Circular No. 43/95-OPD-T, dated 21.7.1995, although respondent No.1 has passed order in review petition on 23.3.1997, reinstating him as a fresh driver. Thus the counter is conspicuously silent on this aspect.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

Nothing is demonstrated before this court as to why the respondents have not considered the case of the petitioner in the light of Clause L of Circular No. 43/95-OPD-T, dated 21.7.1995, and more so when it is admitted by the Standing Counsel for the respondents that the said Circular was issued superceding all previous circulars on the subject. It is not the case of the respondents that the petitioner does not fall in the category of workmen enumerated in the above Circular dated 21.7.1995. Therefore, the action of respondent No. 1 in not considering the case of the petitioner in the light of Clause L of the above Circular, is illegal and arbitrary. Inasmuch as the case of the petitioner was not considered

in the light of Clause L of the above Circular, it is appropriate that the matter is remitted to respondent No.1, to review the appeal of the petitioner once again in the light of Clause L of Circular No. 43/95-OPD-T, dated 21.7.1995.

Hence, the writ petition is allowed, and respondent No.1 is directed to review the order passed in the appeal of the petitioner in the light of Clause L of Circular No. 43/95-OPD-T, dated 21.7.1995, and pass appropriate orders granting the benefit of the said Circular, namely continuity of service from the date of his removal till he was reinstated into service as Driver afresh by treating the period of his absence as leave due. No costs.

N.V.RAMANA, J.

March 2, 2006.

MAS.